

CIVIL COVER SHEET

I. (a) PLAINTIFFS

BETH APFELBAUM

DEFENDANTS

LAW OFFICE OF HARRIS & ZIDE; BANK OF AMERICA, N.A.; and
DOES 1 through 10 inclusive

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

Jeremy S. Golden (SBN 228007)
Law Offices of Eric F. Fagan
2300 Boswell Rd., Suite 211
Chula Vista, CA 91914 Tel: 619-656-6656; Fax: 775-898-5471

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ADR

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II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff
(For Diversity Cases Only) and One Box for Defendant)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT		TORTS		FORFEITURE/PENALTY		BANKRUPTCY		OTHER STATUTES	
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury--- Med. Malpractice <input type="checkbox"/> 365 Personal Injury --- Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment				
<input type="checkbox"/> 120 Marine			<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal	<input type="checkbox"/> 410 Antitrust				
<input type="checkbox"/> 130 Miller Act			<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	28 USC 157	<input type="checkbox"/> 430 Banks and Banking				
<input type="checkbox"/> 140 Negotiable Instrument			<input type="checkbox"/> 630 Liquor Laws	PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 450 Commerce				
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment			<input type="checkbox"/> 640 R.R. & Truck		<input type="checkbox"/> 460 Deportation				
<input type="checkbox"/> 151 Medicare Act			<input type="checkbox"/> 650 Airline Regs.		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations				
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)			<input type="checkbox"/> 660 Occupational Safety/Health		<input type="checkbox"/> 480 Consumer Credit				
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits			<input type="checkbox"/> 690 Other		<input type="checkbox"/> 490 Cable/Sat TV				
<input type="checkbox"/> 160 Stockholders' Suits			LABOR		SOCIAL SECURITY	<input type="checkbox"/> 810 Selective Service			
<input type="checkbox"/> 190 Other Contract			<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410			
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 890 Other Statutory Actions					
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 892 Economic Stabilization Act					
REAL PROPERTY	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 893 Environmental Matters				
			<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 894 Energy Allocation Act				
			<input type="checkbox"/> 791 Emp'l Ret. Inc. Security Act	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 895 Freedom of Information Act				
			IMMIGRATION		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice				
			<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 950 Constitutionality of State Statutes				
		<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee							
		<input type="checkbox"/> 465 Other Immigration Actions							

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**):
15 U.S.C. 1692 Various violations of the Fair Debt Collections Practices Act.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$
UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S)
IF ANY**

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE
"NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)
(PLACE AND "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE

DATE _____

SIGNATURE OF ATTORNEY OF RECORD

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CV 08 2750

) [REDACTED]
) [REDACTED]

**) COMPLAINT (Unlawful Debt
Collection Practices)**

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I. INTRODUCTION

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practices.

II. JURISDICTION AND VENUE

2. Jurisdiction of this Court arises under 15 U.S.C. §1692k(d) and 28 U.S.C. §1337. Supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. §1367. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202. Venue in this District is proper in that the Defendants transact business here and the conduct complained of occurred here.

III. PARTIES

3. Plaintiff BETH APFELBAUM is a natural person residing in California.

4. Defendant LAW OFFICE OF HARRIS & ZIDE ("HARRIS & ZIDE") is a California company doing business in California of collecting consumer debts owed to another, with its principal place of business located at 1445 Huntington Dr., Suite 300; South Pasadena, CA 91030.

5. Defendant BANK OF AMERICA, N.A. ("BOFA") is a Delaware corporation regularly engaged in attempting to collect debts owed to another through litigation in this California; its principal place of business is 100 South Tryon St. Charlotte, NC 28255

6. Defendants are all engaged in the collection of debts from consumers using the mail and telephone and regularly attempt to collect consumer debts alleged to be due to another. Defendant HARRIS & ZIDE is a "debt collector" as defined by the FDCPA, 15 U.S.C. §1692a(6). Defendants are "debt collectors" as defined by the Rosenthal Act, California Civil Code 1788.2(c).

7. The true names and capacities, whether individual, corporate (including officers and directors thereof), associate or otherwise of Defendants sued herein as DOES 1 through 10, inclusive, are unknown to Plaintiff, who therefore sues these Defendants by such fictitious names. Plaintiff is informed and believes, and alleges that each Defendant designated as a DOE is involved in or is in some manner responsible as a principal,

beneficiary, agent, co-conspirator, joint venturer, alter ego, third party beneficiary, or otherwise, for the agreements, transactions, events and/or acts hereinafter described, and thereby proximately caused injuries and damages to Plaintiff. Plaintiff requests that when the true names and capacities of these DOE Defendants are ascertained, they may be inserted in all subsequent proceedings, and that this action may proceed against them under their true names.

8. Plaintiff is a "consumer" as defined by the FDCPA, 15 U.S.C. §1692a(3).

9. The purported debt that Defendants attempted to collect from Plaintiff was a "debt" as defined by the FDCPA, 15 U.S.C. §1692a(5).

10. Plaintiff is a "debtor" as defined by the Rosenthal Act, California Civil Code §1788.2(h).

11. The purported debt which Defendants attempted to collect from Plaintiff was a "consumer debt" as defined by the Rosenthal Act, California Civil Code §1788.2(f).

IV. FACTUAL ALLEGATIONS

12. The FDCPA was enacted to "eliminate abusive debt collection practices by debt collectors, to insure those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent state action to protect consumers against debt collection abuses."

13. At a time unknown, BOFA issued a credit card in Plaintiff's name (the "account").

14. On September 5, 2003, Plaintiff enrolled with Provanta Corp., a debt settlement company.

15. Neither Plaintiff nor Provanta Corp. made any payments on the account after September 5, 2003.

16. On November 1, 2007, Defendants filed suit in the Superior Court of California, County of San Francisco, Case No. CGC-07-468758 (the ACTION) to collect the account.

17. The ACTION was time-barred.

1 18. The complaint in the ACTION stated that interest was accruing on damages
2 from August 18, 2003, thereby implying that the date of last activity was in August 2003.

3 19. On December 11, 2007, Brandy, an employee and agent of Provanta, told Mario,
4 an employee and agent of HARRIS & ZIDE that the account was past the statute of
5 limitations.

6 20. On December 11, 2007, Mario and Brandy had a second conversation and Mario
7 stated he called BOFA and then he falsely stated that the last payment on the account was on
8 April 11, 2004.

9 21. Brandy told Mario that a last payment on that date was not possible and
10 confirmed as such with the Plaintiff.

11 22. On December 27, 2007, Mario changed his story and stated in a conversation
12 with Brandy that the last payment occurred on August 18, 2003, and the charge-off date was
13 April 2004.

14 23. Defendants knew the ACTION was time-barred; nevertheless, on or about
15 January 3, 2008, Defendants served the summons and complaint on Plaintiff.

16 24. Defendants continued to pursue the ACTION until on or about February 7,
17 2008, when they dismissed the case without prejudice.

18 25. As a result of the acts alleged above, Plaintiff suffered great stress, worry, and
19 emotional distress. Further, Plaintiff was forced to incur legal expenses in defense of the
20 ACTION.

21
22 **V. FIRST CLAIM FOR RELIEF**
23 **(Against Defendant HARRIS & ZIDE and**
24 **DOES 1 through 10 for Violation of the FDCPA)**

25 26. Plaintiff repeats and realleges and incorporates by reference all of the foregoing
26 paragraphs.

27 27. Defendants violated the FDCPA. Defendants' violations include, but are not
28 limited to, the following actions taken against the Plaintiff:

- (a) The Defendants violated 15 U.S.C. § 1692d by engaging in conduct the natural consequence of which is to harass, oppress, or abuse Plaintiff in connection with the collection of the alleged debt;
- (b) The Defendants violated 15 U.S.C. § 1692e by using false, deceptive, or misleading representations or means in connection with the collection of a debt;
- (c) The Defendants violated 15 U.S.C. § 1692e(2)(A) by giving the false impression of the character, amount or legal status of the alleged debt;
- (d) Defendants violated 15 U.S.C. § 1692e(2)(A) by misstating the status of the debt as implying that the Defendant would prevail in the Action;
- (e) The Defendants violated 15 U.S.C. § 1692e(10) by using a false representation or deceptive means to collect or attempt to collect any debt or to obtain information regarding a consumer;
- (f) The Defendants violated 15 U.S.C. § 1692(f) by using unfair or unconscionable means to collect or attempt to collect a debt;
- (g) The Defendants violated 15 U.S.C. § 1692(f)(1) by attempting to collect an amount not authorized by the agreement that created the debt or permitted by law.

28. As a result of the above violations of the FDCPA, Defendants are liable to the Plaintiff for Plaintiff's actual damages, statutory damages, and attorney's fees and costs pursuant to 15 U.S.C. § 1692k.

VI. SECOND CLAIM FOR RELIEF

(Against all Defendants for Violation of the Rosenthal Act)

29. Plaintiff repeats, realleges and incorporates by reference all of foregoing paragraphs.

30. Defendants violated the Rosenthal Act, by including but not limited to, the following:

1 (a) The Defendants violated California Civil Code §1788.17 by failing to
2 comply with the FDCPA as alleged above.

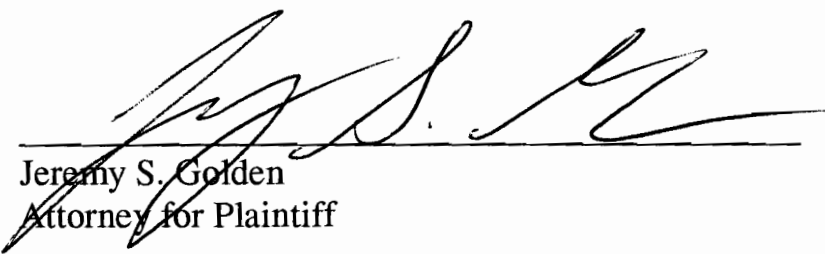
3 31. As a proximate result of Defendants' violations enumerated above, Plaintiff has
4 been damaged in amounts which are subject to proof.

5 32. Defendants' violations of the Rosenthal Act were willful and knowing.
6 Defendants are therefore liable to Plaintiff for Plaintiff's actual damages, statutory damages,
7 and attorney's fees and costs pursuant to California Civil Code §1788.30.

8
9 WHEREFORE, Plaintiff respectfully requests that judgment be entered against
10 Defendants and for the following:

- 11 A. Actual damages;
12 B. Statutory damages pursuant to 15 U.S.C. §1692k and California Civil Code
13 §1788.30(a).
14 C. Costs and reasonable attorney's fees pursuant to 15 U.S.C. §1692k and
15 California Civil Code §1788.30(b) and §1788.30(c)
16 D. For such other and further relief as the Court may deem just and proper.

17
18 Date: 5/29/08

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21 _____
22 Jeremy S. Golden
23 Attorney for Plaintiff
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